

Title 3. Department of Food and Agriculture (Noticed Published May 14, 2004)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to adopt the following in Title 3 of the California Code of Regulations:

- Section 2042, Article 3, Subchapter 2, Chapter 3, which concerns allocation of handler payments to producers for bulk milk purchased; and
- Section 2100, Article 1, Subchapter 4, Chapter 3, which concerns eligibility for coverage under the Milk Producers Security Trust Fund and how a beneficial ownership interest is determined; and
- Section 2101, Article 1, Subchapter 4, Chapter 3, which concerns definition of milk eligible for Trust Fund coverage; and
- Section 2102, Article 2, Subchapter 4, Chapter 3, which concerns the calculation of Trust Fund obligations to producers.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Bob Maxie, Department of Food and Agriculture, Milk Pooling Branch, 1220 N Street, Sacramento, CA, 95814. Written comments must be received no later than 5:00 p.m. Monday, June 28, 2004. Written comments may also be sent to Bob Maxie via electronic mail at bmaxie@cdfa.ca.gov or via FAX (916) 341-5995.

CONTACT PERSON

Inquiries concerning this action may be directed to Bob Maxie at (916) 341-5901. The backup contact person is Mary Riley at (916) 341-5988.

AUTHORITY AND REFERENCE

Food and Agricultural Code (FAC) Section 407 authorizes the Department to adopt the proposed regulations, which would implement, interpret, or make specific sections 62185, 62190, 62501, 62521(e), 62580, 62587, 62623 and 62624 of the FAC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Food and Agricultural Code Section 62185 provides that when a milk handler fails to pay dairy producers as required, the Department shall obtain information sufficient to determine the amount owed to each producer. FAC Section 62190 provides that for purposes of action on a bond, payments shall be applied with credit first to interest and then to principal. Section 62501 requires producers to receive prompt payment, and to protect them against loss of payment for bulk milk. FAC Section 62623 states how amounts owed to producers shall be calculated when a claim is made against the Milk Producers Security Trust Fund.

Section 2042 will specify how payments will be allocated between bulk milk purchased and other items. The purpose of Section 2042 of the proposed regulations is to specify how handler payments to producers for bulk milk purchases shall be applied to amounts owed and in the event of a claim against the Trust Fund, how handler payments will be applied to the oldest amount due first, then successively, to the next oldest amount due, etc.

FAC Section 62580 lists the criteria required for a producer to be considered for coverage under the Milk Producers Security Trust Fund. This includes the requirement that the producer does not have a beneficial ownership interest in the handler to whom shipments were made. FAC Section 62587 allows the Department to waive any of the provisions of Article 5, Milk Producers Security Trust Fund, if it finds that a hardship would be imposed on persons which is not consistent with the intent of the chapter.

Section 2100 will define what is meant by “beneficial ownership interest” and explain how it will be determined in various types of business ownership arrangements. FAC Section 62580 states that producers who have a beneficial ownership interest in the handler to whom they ship their milk are not eligible to have their shipments covered under the provisions of the Milk Producers Security Trust Fund. The proposed regulations define various different possible business relationships, and identify what shall and shall not be considered to be a beneficial ownership interest.

FAC Section 62521(e) defines “milk” for purposes of Trust Fund eligibility. Section 2101 clarifies this definition to distinguish which ingredients may be added and allow the milk to remain eligible for coverage.

FAC Section 62623 states the guidelines for calculating Trust Fund payments to producers, Section 62624 states the amount that shall be deducted from the claims of producers, and provides that the balance shall be paid from the Trust Fund on a pro rata basis.

Section 2102 will specify and clarify how Trust Fund claim amounts will be determined and calculated. It will explain the sequence and steps followed in the calculation, and will state that only *eligible* milk will be used as the basis for calculation and pro ration of the amounts owed each producer.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following determinations

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The initial determination is that there is no statewide adverse economic impact.
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The adopting of the subject regulations does not require a report.
- Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Bob Maxie
Research Manager II
Milk Pooling Branch
Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
Telephone: (916) 341-5901

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any or other information upon which the rulemaking is based to:

Mary Riley
Research Analyst II
Dairy Marketing Branch
Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
Telephone: (916) 341-5988

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 150, Sacramento, CA 95814. The text of proposed regulations and initial statement of reasons are also available on the Internet, at www.cdfa.ca.gov/dairy. When the final statement of reasons has been prepared, it will also be available at this website. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Cheryl Gilbertson at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention Cheryl Gilbertson of the Dairy Marketing Branch at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Cheryl Gilbertson at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.cdfa.ca.gov/dairy.